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No. 86-424

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1986

RODNEY F. STICH

Appellant

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO;
COURT OF APPEAL, STATE OF CALIFORNIA,
FIRST APPELLATE DISTRICT;
EMMA W. STICH,

Appellees.

On Appeal from the Court of Appeal
of the State of California

MOTION FOR RECONSIDERATION DISMISSAL OF APPEAL

Rodney F. Stich
Post Office Box 11455
Reno, Nevada 89510
Telephone: (702) 826-1185
Appellant in pro se

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In accordance with Rule 51 of the United States Supreme Court, appellant petitions this court for rehearing of its dismissal of appellant's appeal. This court dismissed appellant's appeal by notice dated November 10, 1986, extending until December 9, 1986 the time to petition for rehearing.

ARGUMENT

This court dismissed appellant's appeal by first treating the appeal as a petition for Writ cf Certiorari, and then ordering a discretionary dismissal of the "petition." Appellant argues that his jurisdictional statement and reply brief cited the legal requirements entitling him to the protection of an appeal, based upon the unconstitutional decisional law of the State of California, and the unconstitutional interpretation and application of state law by the Superior Court, County of Solano, which have been upheld by the California appellate

courts.

As a matter of law, the appeal should not have been dismissed:

1. Appellant's appeal met the criteria of an appeal; constituted an appeal; and invoked the jurisdiction of the United States Supreme Court under the provisions of Title 28 United States Code Section 1257(2).

2. Appellant's due process right under the Fifth Amendment to the United States Constitution, inter alia, entitles him to the protection of an appeal. He has appealed to this Court the unconstitutional holdings in the published decision, In re Marriage of Stich, 167 Cal.App.3d 226. The unconstitutional holdings of the decisional law is appealed to this court under the statutory authority of 28 United States Code Section 1257(2).

3. The United States Supreme Court has the additional responsibility, under

Title 42 United States Code Section 1986, and by this Court's inherent responsibilities, when a citizen is subjected to massive violations of his civil and constitutional rights, arising from the misuse of government facilities directed to a government "whistle blower" who sought to expose an airline crash related aviation government scandal. It was this exposure and attempted corrective actions, that triggered the unconstitutional attacks which led to the present appeal.

BRIEF SUMMARY OF FACTS

As exists with millions of other persons, appellant is and has been legally divorced, following a bilateral consent divorce proceeding occurring 21 years ago. As in these millions of other divorce proceedings, the court rendering the 1966 divorce based its jurisdiction upon residence of the party bringing the action, and over the other party upon

personal service, upon voluntary submission to the court's personal jurisdiction, and by voluntary appearance via legal counsel.

The appealed decisional law of the State of California holds that none of these bases for personal jurisdiction, available to other citizens of the United States, are available to appellant. The published decisional law upholding the California lower court decisions, holds that California courts will not recognize divorce judgments rendered by courts foreign to California, over residents of such courts, when the courts based their personal jurisdiction upon residence.

Enlarging upon this bizarre, illegal, and unconstitutional holding that is now California law, the published decision approved a massive sequence of illegal and unconstitutional acts to destroy appellant's financial means of continuing his exposure activities of the airline

crash related government and aviation scandal.

The holding denying residence as a base for personal jurisdiction relied upon this unconstitutional holding to unconstitutionally violate, misinterpret, and misapply, California law. The "residence-voiding" holding deprives appellant, and the millions of other persons holding divorce judgments where court jurisdiction was based upon residence, deprives the vast majority of United States citizens who intend to frequently change their place of residence, the right to a divorce, among multiple rights being unconstitutionally violated.

The decisional law of the State of California then enlarged on this major unconstitutional holding, by holding that based upon the "invalid" residence base for personal jurisdiction, that it could void appellant's divorced status that has

already been recognized in divorce judgments registered and confirmed, and registered, in six court jurisdictions throughout the United States.

The decisional law held that based on the "invalid" residence base for personal jurisdiction, that appellant's property rights, protections and obligations, adjudicated in the 1966 divorce judgment, are void; that the property rights appellant acquired as a legally divorced person while residing in Oklahoma, New York, California, and Nevada, are void; that the 1966 judgment eliminating any requirement for either party to pay spousal support, is void; and all other rights adjudicated 21 years earlier are void.

I. TOTAL DESTRUCTION OF APPELLANT'S PERSONAL LIBERTIES, HIS PERSONAL AND PROPERTY RIGHTS, WERE OPENLY INFLICTED, IN THE PUBLISHED DECISIONAL LAW BEING APPEALED.

The unconstitutional holdings that rewrites the United States Constitution, the California law now establishes the following unconstitutional law:

1. California courts can retroactively deny to residents of jurisdictions foreign to California the right to invoke court jurisdiction, the right to obtain a divorce, by denying recognition to the universally applied, and constitutionally acceptable, residence base for personal jurisdiction.

The published decisional law unconstitutionally interpreted and applied state law relevant to accepted bases for court jurisdiction, by holding that a requirement for, and a determination of domicile intent, is required before California courts will recognize the judicial acts of courts foreign to California, the personal and property rights established by prior divorce judgments, or the property rights

acquired as a divorced person following such earlier divorce judgments.

Unconstitutionally interpreted, or unconstitutionally denied to appellant and other divorced persons, are the protections in: (a) California Code of Civil Procedure Sections 410.10 (jurisdiction acquired on any basis not inconsistent with the Constitution, known as California's long arm jurisdiction statute.); (b) Code of Civil Procedure § 1713.5(a)((2)(3) (providing for exercise of court jurisdiction on the basis the person voluntarily appeared and agreed prior to the start of the action to the court's jurisdiction); (c) Code of Civil Procedure § 1713.5(b) (providing that court jurisdiction can be invoked and recognized on other bases recognized by the United States Constitution); (d) Code of Civil Procedure § 418.10(a) (jurisdiction automatically acquired if not objected to within a limited time

after service of process); (e) Code of Civil Procedure § 430.80(a) (objection to jurisdiction waived by failure to object to the personal jurisdiction of the 1966 divorce court); Evidence Code § 666 (requires conclusive presumption that the prior court acted within its lawful exercise of jurisdiction); Civil Code §§ 4530 and 4531 provides for residence as a recognized base for personal jurisdiction, prohibiting the California courts from voiding judgments rendered by other courts, over residents of the other court's jurisdiction, on the holding it would not recognize residence as a basis for personal jurisdiction; California Evidence Code § 666, requiring California courts to give conclusive presumption that the prior court acted in the lawful exercise of its jurisdiction.

Prohibiting denying recognition to prior divorce judgments by refusing to accept residence as a base for personal

jurisdiction, California decisional law, including Rediker v. Rediker (1950) 35 Cal.2d 796; Spellens v. Spellens (1957) 498 C.2d 210; Scott v. Scott (1958) 51 C.2d 249; Whealton v. Whealton (1967) 67 C.2d 656.

2. Property rights that had been determined by a prior court relying for jurisdiction on residence (and submission to the court's jurisdiction), property rights acquired during the next 21 years, can be taken, on the holding that the prior court lacked personal jurisdiction by its reliance on residence and submission to the court's personal jurisdiction. The current law of California is that this property can be divided with a former wife--who declares herself divorced from appellant in her resident State of Texas, and can be confiscated to pay for attorney fees and costs to finance the suit against appellant, and can be confiscated to pay

the unconstitutional sanctions ordered for exercising constitutional procedural due process remedies--all while appellant was in a protected special appearance, without personal and subject jurisdiction existing.

3. Civil and constitutional rights arising from federal decisional law and doctrines of law, California statutory law, California decisional law, and doctrines of law, prohibiting collateral attacks, prohibiting relitigating the issues litigated 21 years earlier, can be violated and circumvented, on the argument that residence is not a recognized base for personal jurisdiction.

4. The decisional law also held that these acts can be ordered taken, not only on the basis that residence is not a recognized base for court jurisdiction, but on the following arguments:

a. On the holding that the former wife

now declares that she was "distraught" during the divorce proceedings occurring 21 years earlier, that therefore the 1966 court lacked personal jurisdiction. This holding permits a taking of civil and constitutional protections, voiding of judicial rights, upon a claim, 20 years later, after exhausting the benefits of submitting to that prior court's jurisdiction, that she was "distraught." There is no requirement for court jurisdiction that the parties be "happy," or at least, not "distraught."

b. On the holding that the 1966 court did not order spousal support to be paid by either of the parties (none was requested), the California courts could "correct" the matter and will relitigate the matter 21 years later that has been res judicata, and reconfirmed in six subsequent registration and confirmation and registration in judicial districts throughout the United States. This

adjudication was exercised by an unconstitutional taking of appellant's money and property rights.

c. Upon the holding that the 1966 court erred by holding, as the parties had themselves agreed, that there was no community property, when in fact the parties owned separate property (totally compatible), that appellant's property rights, already adjudicated, would be distributed on the basis that 21 years after the divorce all property existing at the time of the divorce, and subsequently acquired, was actually community property.

5. Upon the unconstitutional holding that a hearing need not be granted when the California court's personal and subject matter jurisdiction is challenged, and that orders can be rendered while appellant was in a protected special appearance status. The unconstitutional decisional law being

appealed approved, and itself committed, the taking of appellant's property, his personal liberties, including orders to go to jail, orders halting appellant's income for over three years, orders taking and destroying appellant's personal and property rights.

6. The published decisional law held that California courts can strip persons exercising their constitutional travel rights of their personal and property rights, and their liberties and freedom, and be ordered to go to jail, commencing these unconstitutional violations on the unconstitutional holding that residence is not a legal base for personal jurisdiction when exercised by courts foreign to California.

7. The published decisional law held that California courts can deny the protection of a protected special appearance to a party, if the attack upon his personal and property rights is

couched in a domestic relations label. This holding was itself unconstitutional, and unconstitutionally interpreted California Rule of Court 1232 and California Civil Code Section 4356. Appellant was in a protected special appearance status throughout the rendering of the orders that took, and destroyed, his personal and property rights, and his liberties.

These takings occurred without subject matter jurisdiction, as the California Family Law Act and California Family Rules of Court provides no authority for relitigation the personal jurisdiction of a prior court, or any other issue. Further, this authority specifically prohibits asserting any other cause of action or claim under the authority of the Family Law Act or Family Rules of Court. (Civil Code §§ 4530, 4531, California Rule of Court 1201(c), limits the court's subject matter jurisdiction

to dissolution of an existing marriage, nullity of marriage, or legal separation, and provides no authority to void prior divorce judgments, or for relitigating the personal jurisdiction of the 1966 court.) California Family Rule of Court rules 1211 and 1207 prohibit either party from asserting "against the other party ... any cause of action or claim for relief other than for the relief provided in these rules or the Family Law Act."

Appellant was in a protected special appearance status from the December 1982 objection to the court's jurisdiction, from the February 17, 1983 filing of the motion to quash, until January 14, 1986, during which appellant was subjected to a devastating taking of his personal liberties, personal and property rights, orders to go to jail, bench warrants for his arrest, halting of his sole source of income for four years, taking and destruction of his property, foreclosure

actions and loss of his home. These massive unconstitutional violations had as their initial source of "authority" the holding that residence is not a legal base for personal jurisdiction!

Constitutional interpretation of California law prohibited the targeted destruction of appellant. California Civil Code §§ 4356 provides for a protected special appearance following the raising of an objection to the California court's personal jurisdiction.

Concurrent protection was provided by, inter alia, California Rule of Court 1232(a), as does federal and state decisional law. Rule 1232 states: "A defense which is raised by a motion to quash pursuant to Rule 1230 is not waived by later filing a response." Appellant immediately objected to the jurisdiction of the California courts in his first response to the petition for dissolution of marriage, and then followed with a

motion to quash. The California court accepted the filing of the motion to quash, and rendered a decision on the motion--three years later, on January 13, 1986.

8 The published decisional law enlarged upon its own unconstitutional holdings, by an unconstitutional application of California law, as argued in appellant's brief. The current decisional law being appealed held that California courts can severely punish appellant, or any other divorced person, who exercises the specific procedural due process remedies (motion to quash, petition for writ of prohibition, appeal) when a legally prohibited collateral attack is made upon a prior divorce judgment; upon previously adjudicated personal and property rights; when personal and property chaos is wrought by a holding that residence is not a recognized base for personal

jurisdiction. The appealed decisional law holds that divorced persons must willingly abandon fundamental constitutional rights that are specifically provided by California procedural due process law, allow personal and property rights to be voided in violation of state, federal and constitutional law, and then relitigated under the unconstitutional holdings of the California courts. For not abandoning these constitutional protections appellant was openly punished in the appealed decisional law, with orders totaling approximately $50,000, on top of orders halting appellant's income for almost four years.

10. The published decision establishes as California law the holding that the subjective mental state of at least one of the parties must be a basis for personal jurisdiction, establishing an intent to reside forever in that court's

jurisdiction.

This bizarre holding unconstitutionally intrudes into the privacy, and into the due process rights, of residents of jurisdictions foreign to California, and into the sovereign rights of other courts. It further denies the right to a divorce to those persons whose life style, desires, or financial necessity, requires a change of residence. to obtain a divorce is unconstitutional by abridging the party's right to change residence. This bizarre twisting of constitutional and civil rights are now the holdings in the decisional law appellant is appealing to this Court, as provided by statutory law and the Fifth Amendment protection of the United States Constitution. are the law in the State of California.

Further, California courts exert jurisdiction over United States citizens on bases other than domicile. California

statutory law and court practice provides strictly for residence as a base for personal jurisdiction, although denying this right to appellant. Further, California courts will exercise jurisdiction over residents of other states, as in Kulkio v. California Superior Court (1977) 19 C.2d 514; 436 US 84, the California court recognized its bizarre holding that it had jurisdiction over a New York State resident to order his to pay money, on the basis that a New York father allowed his daughter to visit the State of California. Simultaneously, it denies to appellant, and to the millions of other divorced persons where the prior court jurisdiction was based upon residence, the right to invoke court jurisdiction in the place of residence, under the universally accepted residence base for personal jurisdiction.

II THIS COURT HAS A RESPONSIBILITY UNDER TITLE 42 UNITED STATES CODE, SECTION 1986, AS DOES ANY OTHER BODY WITH POWER TO ACT, WHEN MAJOR CIVIL AND CONSTITUTIONAL RIGHT VIOLATIONS ARE MADE KNOWN.

Title 42 United States Code Section 1986 provides that any person to whom violations of civil and constitutional rights are made known, who have the ability to act, and who do not act, are liable to the injured party for damages. Appellant argues that the nine justices of the United States Supreme Court have as great a responsibility, and actually far greater, when they have presented to them the massive violations of fundamental constitutional rights in newly rendered California decisional law. The refusal of this Court to act violates its responsibilities, violates appellant's due process remedies, and places the stamp of approval on the